

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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TO: Commissioners and Alternates

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SUBJECT: Status Report on Bay-Delta Planning and Decision-Making
(For Commission consideration on April 2, 2009)

Summary

The Commission has directed the staff to provide information on Bay-Delta planning and decision-making processes. As the fifth in a series of speakers on Bay-Delta activities, Karla Nemeth of the California Natural Resources Agency will brief the Commission on the Bay Delta Conservation Plan on April 2, 2009.

The staff is participating in the development of the Bay Delta Conservation Plan, as well as other ongoing Bay-Delta planning processes, focusing on the need for (1) providing adequate freshwater flows to the Bay and Suisun Marsh, and (2) developing a coordinated regional approach to wetland restoration, sediment management, and planning for climate change in the Bay and Delta. The *BDCP Overview and Update* is attached for Commissioners' review.

In January, the agencies developing the Bay Delta Conservation Plan released their Draft Conservation Strategy and re-initiated the public scoping process for their environmental analysis. Also in January, the Delta Vision cabinet committee issued an implementation plan that endorsed most of the recommendations of the Delta Vision Blue Ribbon Task Force but weakened some key elements. Some Delta Vision recommendations are being implemented immediately while others will require legislation. Based on drought conditions, the state and federal water agencies petitioned for a temporary change in Delta outflow requirements for the month of February, but the petition was denied. Water pumping in the Delta may be further restricted to protect longfin smelt, which was listed as endangered by the state in March



Making San Francisco Bay Better

Staff Report

Delta Update

BDCP. The Bay Delta Conservation Plan (BDCP), which is being prepared by the state and federal water project operators (the California Department of Water Resources and the U.S. Bureau of Reclamation), water contractors, resource agencies and nongovernmental organizations, will analyze the potential for habitat restoration, provision of adequate flows, and the reduction of other stressors to offset impacts of water project operations. The BDCP will include analysis of potential benefits and impacts of a peripheral canal. This analysis will be used to prepare a new plan for mitigating the impacts of water diversions. The draft Conservation Strategy for the BDCP was released in January 2009. DWR expects to complete the BDCP by the end of 2010. (See attached *BDCP Overview and Update*.)

Delta Vision. Based on the Delta Vision Blue Ribbon Task Force's recommendations, the Delta Vision cabinet committee developed an implementation plan that was delivered to the Governor and the Legislature in January. The plan is intended to achieve the "co-equal goals" of Delta ecosystem recovery and water supply reliability, as well as improve the health and safety of Delta communities.

As the Hon. Phil Isenberg noted in his Commission briefing on January 15, 2009, the Delta Vision cabinet committee adopted all seven of the Task Force's goals and all but two of the Task Force's 22 strategies. Delta Vision Committee recommendations that differ from those of the Task Force include the following:

- **Delaying incorporation of the co-equal goals into statute.** The Task Force called for the co-equal goals of ecosystem restoration and water supply reliability to be written into the California Constitution or into statute. The Delta Vision Committee calls for using a public process to develop standards for interpretation and application of the co-equal goals before passing a law, including how to reconcile them with existing California water rights law, and with state and federal water quality and endangered species laws.
- **Forming an interim group to develop the Delta plan.** The Task Force recommends establishing a permanent California Delta Ecosystem and Water Council to prepare and implement a new Delta Plan, while the Committee recommends establishing an interim Delta Policy Group to develop the Plan and make recommendations regarding a long-term governance plan.
- **Deferring a decision regarding federal participation.** The Task Force recommends optimizing the use of the CALFED Record of Decision and federal Coastal Zone Management Act to maximize participation of federal agencies in implementation of the Delta Plan. The Committee encourages the Governor and the Legislature to consider issues that must be clarified before proceeding with the Task Force's recommendation. Instead, the Committee recommends requesting that the federal government participate in the Delta Policy Group at the highest appropriate level.

- **Reducing the scope for the proposed Delta plan.** The Blue Ribbon Task Force recommends developing a California Delta Ecosystem and Water Plan that builds upon and integrates other plans, including plans for ecosystem restoration, water supply, land use and resource management in the Delta. The Committee recommends developing a Delta plan that integrates plans for ecosystem restoration, flood protection, infrastructure and “local issues and concerns”, but does not include integration of water supply management.

Many of the Delta Vision recommendations are being carried forward by the appropriate agencies or have been incorporated into bills being considered in the current legislative session.

Water Board and Delta Outflow. Based on extremely dry conditions through early February and low reservoir levels, the state and federal water agencies petitioned for a temporary urgency change in the February Delta freshwater outflow (X2) standard in order to preserve cold water pools in upstream reservoirs for salmon preservation and water supply. Due to plentiful rainfall in mid-February, the State Water Resources Control Board (Water Board) denied the petition, stating the need was no longer urgent. However, by the time the Water Board made its decision, the water agencies had already failed to attain the Delta outflow “starting gate requirement,”¹ which must be met for at least one day between February 1 and February 14. The Water Board did not recommend enforcement action against the agencies, despite the apparent violation of the X2 standard.

In addition to hearing this urgent request for a change in Delta outflow, the Water Board is pursuing a longer-term investigation into Delta outflow requirements. To this end, the Water Board has initiated a review of the southern Delta salinity standards and San Joaquin River flow objectives and an update of the Bay-Delta Water Quality Control Plan.

New Pumping Restrictions to Protect Fish. On March 4, 2009, the California Fish and Game Commission voted to list the longfin smelt as threatened under the state endangered species act. The U.S. Fish and Wildlife Service (FWS) is expected to issue its decision regarding listing the longfin smelt under the federal endangered species act in May 2009.

The California Department of Fish and Game has stated that new pumping restrictions may be required to protect longfin smelt, which migrate from the Bay to the Delta to spawn, hatch and rear between December and June. The FWS Delta smelt biological opinion, revised in December 2008, imposed significant pumping restrictions, but DFG is concerned that these measures may not be sufficient to protect longfin smelt from entrainment in water project pumps. Longfin smelt spawn earlier in the winter than Delta smelt and there is not yet a trigger to protect longfin smelt larvae if they become abundant in the Delta in January or February.

The National Marine Fisheries Service’s revised salmon and steelhead biological opinion on water project operations, ordered by U.S. District Judge Oliver Wanger, is due this month.

Commission’s Role

¹ Under this requirement (described in the third sentence of Footnote 10 to Table 3 of D-1641), either the daily average electrical conductivity (EC) or the 14-day running average daily EC at Collinsville must be less than or equal to 2.64 millimhos per centimeter (mmhos/cm) for at least one day between February 1 and February 14 when the Eight River Index (8RI) for January is more than 900 thousand acre-feet (TAF). January’s 8RI was slightly higher than 900 TAF at 973 TAF, thus triggering the starting gate requirement.

Delta planning and decision-making affects the Commission's jurisdiction by influencing freshwater inflows to the Bay and wetland restoration, particularly in the Suisun Marsh. The Commission is helping to advance Bay-Delta planning and decision-making by emphasizing the need for adequate fresh water inflow to the Bay and Suisun Marsh and the importance of coordinating planning for habitat restoration and climate change adaptation throughout the estuary. The staff is achieving this goal through making formal comments on draft plans and environmental documents, participating in interagency and public meetings, working directly with staff of other agencies and organizations, and tracking legislation.

- **Suisun Marsh Charter Group.** The Suisun Marsh Charter Group is developing a Habitat Management, Preservation and Restoration Plan for Suisun Marsh (Suisun Marsh Plan). The Commission serves on the Regulatory Working Group for this effort and will work with the principals of the Charter Group on a consistency determination for the Suisun Marsh Plan, pursuant to CZMA. The staff conducted a visit to the 70-acre Blacklock site in the northeast section of the Marsh, a tidal marsh habitat restoration project that the Charter Group agencies are implementing as a pilot project to guide development of the Suisun Marsh Plan. Two years after levee breaching, the site appears to have achieved unimpeded tidal exchange is gradually accreting sediment needed for the establishment of marsh vegetation. The staff is working with the permittee DWR on a time extension for delivering the first project monitoring report, which was delayed due to personnel changes.
- **BDCP and State Water Board.** The development of the BDCP and State Water Board hearings will provide opportunities for the Commission to participate in setting new standards for salinity and freshwater flows in the Delta, which will also affect Suisun Marsh and the Bay. The staff has been attending BDCP Steering Committee meetings, and plans to comment on the draft environmental document for the Plan, which the Steering Committee expects to release by the end of 2009. The staff will continue to track the progress of the State Water Board's public hearings, such as the drought petition hearing, and will prepare testimony as appropriate.